

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**I.D. # 11664
RESOLUTION E-4531
November 29, 2012**

R E S O L U T I O N

Resolution E-4531. Southern California Edison Company (SCE).

This Resolution approves SCE's request to deviate from "Net Energy Metering (Form 16-344) and Renewable Electrical Generating Facility Interconnection Agreement" (Form 16-344), used in conjunction with SCE's Net Energy Metering Tariff (NEM Tariff).¹ SCE's Proposed Form 16-344-A implements certain interconnection terms and conditions for Federal agencies interconnecting generating facilities and eligible to participate in the NEM Tariff in SCE's service territory. Pursuant to General Order (G.O.) 96-B, this Resolution requires California Public Utilities Commission (Commission) approval.

PROPOSED OUTCOME: Approve SCE's request to (i) approve Proposed Form 16-344-A without modification, and (ii) modify SCE's List of Contracts and Deviations to offer Proposed Form 16-344-A as an interconnection agreement option for any Federal agency interconnecting to SCE's distribution system and otherwise eligible to participate in SCE's NEM Tariff.

ESTIMATED COST: Not determinable.

By Advice Letter (AL) 2704-E filed on February 24, 2012.

¹ Pub. Util. Code § 2827 *et seq.*

SUMMARY

This Resolution (i) approves SCE's Proposed Form 16-344-A without modification, and (ii) approves its addition to SCE's List of Contracts and Deviations. Proposed Form 16-344-A is an interconnection agreement containing certain terms and conditions that comply with Federal law and regulations applicable to contracts for services executed by Federal agencies with SCE, and will be available to any Federal agency seeking to interconnect a generating facility and participate in the NEM Tariff in SCE's service territory. Proposed Form 16-344-A deviates from SCE's Commission-approved Form 16-344 in terms addressing indemnification, governing law, utility-Federal agency services contracts, and the agreement's term of years. Proposed Form 16-344-A conforms to Federal law, Commission decisions, and G.O. 96-B, General Rule 8.2.3 addressing the provision of services by energy utilities to government agencies. One protest was filed.

BACKGROUND

Federal agencies located in SCE's service territory are developing renewable generating facilities designed to offset on-site load and participate in the NEM Tariff. In AL 2704-E, SCE notifies the Commission that at least three Federal agencies, including the National Park Service (NPS), the U.S. Forest Service (USFS), and the Veteran's Administration (VA) have installed generating facilities in SCE's service territory and wish to participate in SCE's NEM Tariff. Additional Federal agencies may decide to install generating facilities and join SCE's NEM Tariff in the future.

Federal agencies are subject to Federal law and regulations setting out terms and conditions for any contracts that such agencies may enter, including contractual arrangements with an electric utility for any type of service. Recently, Federal agencies determined that SCE's Commission-approved Form 16-344, which offers standardized interconnection terms and conditions to all NEM customer-generators, did not meet their needs under Federal contracting regulations.

On that basis, the Federal agencies and SCE negotiated Proposed Form 16-344-A, the terms of which, according to those parties, comply with Federal regulations. As discussed below, Commission decisions have identified the need to develop standardized interconnection agreements to serve different segments of the market. In addition, G.O. 96-B, General Rule 8.2.3 permits energy utilities to

provide services to Federal agencies for free, or at reduced rates, subject to a potential reasonableness review by the Commission.

NOTICE

Notice of AL 2704-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of AL 2704-E was mailed and distributed in accordance with G.O. 96-B, Section 4.

PROTESTS

Advice Letter AL 2704-E was timely protested on March 15, 2012 by the United States Department of the Navy (US Navy).

SCE responded to the protest of the US Navy on March 22, 2012.

DISCUSSION

In 1998, SCE was required to develop a standardized interconnection agreement for NEM customer-generators to implement amendments to the NEM statute.² SCE filed Form 16-344 with AL 1349-E on November 20, 1998, which was approved by this Commission and made effective on January 1, 1999.

Shortly thereafter, the Commission set out the terms of a standardized interconnection agreement to be associated with Electric Tariff Rule 21 (Electric Rule 21) in Decision (D.) 00-12-037.³ In D.00-12-037, the Commission stated its interest in standardizing interconnection terms and conditions, including those set out in interconnection agreements.⁴ However, the Commission did not order SCE to conform Form 16-344 to the terms of the interconnection agreement

² Assembly Bill (AB) 1755 (Keeley, 1998), amending Calif. Pub. Util. Code § 2827.

³ D.00-12-037 at Attachment B, *Decision Adopting Interconnection Standards*, issued December 21, 2000 in Rulemaking (R.) 99-10-025, *Order Instituting Rulemaking Into Distributed Generation*, filed October 21, 1999 (D.00-12-037).

⁴ D.00-12-037 at 16-17.

attached to D.00-12-037. The Commission did note that as different groups of customers began to participate in distributed generation programs, SCE and the other investor-owned utilities would need to “develop a family of standardized agreements that would accommodate export and non-export arrangements.”⁵

Separately, in G.O. 96-B, General Rule 8.2.3, the Commission permits an energy utility to “at all times...provide service...to a government agency for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariffs then in effect.” Further under G.O. 96-B, General Rule 8.2.3, where the utility begins service to a government agency without Commission approval, the utility must promptly notify the Commission of the provision of such service, and Commission “may determine, in an appropriate proceeding, the reasonableness of such service.”

G.O. 96-B, Energy Industry Rule 5.3 (8) specifically requires a utility proposal for service to a government agency pursuant to General Rule 8.2.3 to be submitted with a Tier 3 AL (Effective After Commission Approval).

In 2011, three Federal agencies⁶ determined that certain provisions in SCE’s standard NEM interconnection agreement⁷ did not conform to Federal contracting regulations applicable to Federal agencies. At the request of those agencies, as well as the General Services Administration, the Office of Governor Jerry Brown, and the Offices of Senators Barbara Boxer and Dianne Feinstein, SCE commenced negotiations with the Federal agencies to develop an interconnection agreement that, in the Federal agencies’ view, would comply with Federal regulations.

⁵ D.00-12-037 at 6.

⁶ The agencies included the National Park Service, U.S. Forest Service, and Veterans Administration.

⁷ SCE Form 16-344.

SCE's Proposal

Proposed Form 16-344-A resulted from the above negotiations, and contains four requested deviations:

1. Section 7, Indemnity and Liability: Indemnification provisions are deleted, in order to comply with the Anti-Deficiency Act, 31 U.S.C. § 1341, prohibiting Federal agencies from executing contracts containing indemnification provisions.
2. Section 8, Governing Law: Language identifying California law as the law governing the Proposed Form 16-344-A is replaced with language stating that tariffed electric services are subject to the jurisdiction and regulation by this Commission, except where preempted by Federal law.
3. Section 10, Amendment, Modification, Waiver or Assignment: The text is modified to expressly incorporate the services agreement between the General Services Administration and SCE as part of the entire agreement between SCE and the Federal agency customer.⁸ Exhibit D of the GSA-SCE Areawide Agreement identifies interconnection service as a covered service.
4. Section 12: Term and Termination of Agreement: The term is limited to ten years, instead of a month-to-month term with defined termination rights, to comply with Federal restrictions on Federal agency contracting terms.

Protest and Response to Protest

In its protest, the US Navy requested assurance that Proposed Form 16-344-A be made available to all Federal agencies.

⁸ *Areawide Public Utility Contract for Electric Services, Regulated Energy Management Services and Services under CPUC-Approved Contracts, Contract No. GS-00P-09-BSD-0666, Modified 2/6/12, between the United States of America and Southern California Edison Company (GSA-SCE Areawide Agreement), approved pursuant to Energy Division disposition of SCE AL 2703-E, effective March 26, 2012.*

In response, SCE agreed to make Proposed Form 16-344-A available to all Federal agencies, provided that this Commission approves such applicability.

Staff Analysis

Energy Division staff has reviewed SCE's proposal, and, as set out below, finds that the terms of Proposed Form 16-344-A: (i) meet the Commission's expectation that utilities will develop standardized interconnection terms and conditions for groups of customers, and (ii) are a reasonable provision of service to a Federal agency pursuant to G.O. 96-B, General Rule 8.2.3.

D.00-12-037, Standardized Interconnection Terms and Conditions for Customer Groups

In 2000, in dicta, the Commission identified the likely need, over time, for SCE to develop a "family" of standardized interconnection agreements for use by different market segments with similar needs or characteristics.⁹ In keeping with that statement, the Proposed Form 16-344-A responds to the needs of a group of customers: specifically, any Federal agency owning and/or operating a generating facility interconnected to SCE's distribution system and participating in SCE's NEM Tariff.

G.O. 96-B, Energy Industry Rule 5.3 (8)

G.O. 96-B, Energy Industry Rule 5.3 (8) specifically requires a utility proposal for service to a government agency made pursuant to G.O. 96-B, General Rule 8.2.3 to be submitted as a Tier 3 AL (Effective After Commission Approval). SCE has met this requirement here by filing AL 2704-E (Tier 3).

G.O. 96-B, General Rule 8.2.3

G.O. 96-B, General Rule 8.2.3 allows an electric utility to provide a service to a government agency for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariff then in effect. Further pursuant to G.O. 96-B, General Rule 8.2.3, the Commission may later "determine, in an

⁹ D.00-12-037, page 9.

appropriate proceeding, the reasonableness of such service.” G.O. 96-B does not further define “reasonableness.”

Following are the terms of SCE’s Proposed Form 16-344-A that deviate from Form 16-344:

Indemnity and Liability: In Proposed Form 16-344-A, Section 7, indemnification provisions are deleted. As a result, Federal agencies with NEM generating facilities assume a lower risk of liability for damages to third parties than entities executing Form 16-344.¹⁰ The extent of the risk of third-party harm arising from installation of a generating facility that is subject to the safety and reliability protection requirements set out in Electric Rule 21 is difficult to quantify. In addition, G.O. 96-B, General Rule 8.2.3 permits utilities to provide services to Federal agencies “under terms and conditions otherwise deviating from its tariffs then in effect,” and we note that the text of Section 7 resulted from negotiations overseen by state and Federal government representatives.

Governing Law: In Proposed Form 16-344-A, Section 8, reference to California law is deleted. This presents a unique contractual provision not considered in prior Commission decisions addressing the NEM Tariff or standardized interconnection agreements. As stated above, G.O. 96-B, General Rule 8.2.3 permits utilities to provide services to Federal agencies “under terms and conditions otherwise deviating from its tariffs then in effect,” and we note that the text of Section 8 resulted from negotiations overseen by state and Federal government representatives.

¹⁰ SCE Form 16-344 (*Net Energy Metering and Generating Facility Interconnection Agreement*), Section 7, contains mutual indemnification provisions. As noted above, Form 16-344 was proposed via Advice Letter 1349-E, and went into effect with Commission approval on January 1, 1999. The mutual indemnification provisions have not been modified by the Commission since the effective date. Separately, in D.00-12-037, we deleted indemnification provisions and adopted a limitation of liability clause as a reasonable means of apportioning risk between utilities and customers with generating facilities. D.00-12-037 is ambiguous as to its applicability to different types of generating facilities, but the Commission did not subsequently require SCE to conform Form 16-344 to the interconnection agreement attached to D.00-12-037. Thus, the apportionment of risk ordered by the Commission in D.00-12-037 does not apply to an interconnection agreement executed between SCE and a customer participating in the NEM Tariff.

Amendment, Modification, Waiver or Assignment: In Proposed Form 16-344-A, Section 10, reference is made to the broader GSA-SCE Areawide Agreement. This is an appropriate reference, because the GSA-SCE Areawide Agreement was recently modified to expressly cover interconnection services, and the modification was approved by this Commission.

Term and Termination of Agreement: In Proposed Form 16-344-A, Section 12, the contractual term is limited to ten years. This term is shorter than the standard contractual term in Form 16-344, which remains in effect from month to month unless terminated by either party or if the customer-generator becomes ineligible to participate in the NEM Tariff. We note that the text of Section 10 resulted from negotiations overseen by state and Federal government representatives, and meets the Federal agencies' need to establish a ten-year contract term.

Protest of US Navy

Lastly, we agree with both the protest of the US Navy and SCE's response. Proposed Form 16-344-A shall be made available to all Federal agencies.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. Proposed Form 16-344-A meets the Commission's expectation, stated in dicta in D.00-12-037, that SCE will over time develop a series of standardized interconnection agreements for use by market segments with similar needs or characteristics.

2. Proposed Form 16-344-A was properly filed by SCE with AL 2704-E (Tier 3), pursuant G.O. 96-B, Energy Industry Rule 5.3 (8).
3. Proposed Form 16-344-A resulted from negotiations overseen by state and Federal representatives, and on that basis, falls within G.O. 96-B, General Rule 8.2.3, permitting SCE to provide services to Federal agencies under otherwise deviating from its presently effective tariffs.
4. Because Proposed Form 16-344-A is a deviation from Form 16-344, it is appropriate for SCE to add it to its List of Contracts and Deviations, and make Proposed Form 16-344-A available to any Federal agency owning and/or operating a generating facility interconnected to SCE's distribution system and participating in SCE's NEM Tariff.

THEREFORE IT IS ORDERED THAT:

1. The request of SCE to approve Proposed Form 16-344-A, Net Energy Metering and Renewable Electrical Generating Facility Interconnection Agreement, is approved.
2. The request of SCE to add Proposed Form 16-344-A to SCE's List of Contracts and Deviations is approved.
3. Proposed Form 16-344-A shall be available to all Federal agencies meeting the eligibility requirements set out therein.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 29, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director